

MIKE NEWBERRY)	
Claimant)	
VS.)	
)	Docket No. 250,386
LAFORGE & BUDD CONSTRUCTION)	
Respondent)	
AND)	
)	
CIGNA PROPERTY & CASUALTY COMPANY)	
Insurance Carrier)	

Conversely, claimant contends the Order should be affirmed. Claimant cites K.S.A. 60-226(b)(1) and argues that the parties in workers compensation claims are entitled to discover any information, which is not privileged, and which is either relevant to the claim or reasonably calculated to lead to the discovery of admissible evidence. In his brief to the

Board, claimant contends that he is not assisting the Insurance Commissioner investigate fraud and abuse but that he wants the audit information as it may assist him in his claim.

The only issue before the Board on this appeal is whether respondent and its insurance carrier should be required to produce a copy of the workers compensation audit for the fiscal year July 1, 1999, to July 1, 2000.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

1. The March 30, 2001 Order should be affirmed.
2. Administrative law judges have the power to compel the production of documents to the same extent as district court judges. The Workers Compensation Act provides:

Administrative law judges shall have power to administer oaths, certify official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, documents and records to the same extent as is conferred on the district courts of this state, and may conduct an investigation, inquiry or hearing on all matters before the administrative law judges.¹

3. The parties agree that a principal issue in this claim is whether claimant was respondent's employee or an independent contractor. The Board concludes that the workers compensation audit conducted by respondent's insurance carrier may contain relevant information or reasonably lead to relevant evidence. For example, the document may lead to information regarding, among other things, the parties' intentions to treat claimant as an employee or statements that respondent made concerning claimant's employment status. Therefore, the Board concludes that the Judge's Order requiring production of the audit should be affirmed.

WHEREFORE, the Board affirms the March 30, 2001 Order entered by Judge Frobish.

IT IS SO ORDERED.

¹ K.S.A. 44-551(b)(1).

Dated this ____ day of May 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

I respectfully disagree with the majority's decision to address, at this time, the merits of the ALJ's discovery order. K.S.A. 44-551(b)(1) limits the Board's jurisdiction to review of "final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a." Although pre-award, the ALJ's order is not a preliminary hearing order under K.S.A. 44-534a. Neither is it a final order, award or modification of an award. Contrary to respondent's argument, it should not be treated as a final order under the test contained in Skahan v. Powell, 8 Kan. App. 2d 204, 653 P.2d 1192 (1982). The dispute over this order does not give rise to an important issue that is effectively unreviewable on appeal from a final judgment. The information claimant seeks to discover is not privileged and the request is not overly broad or unduly burdensome. I would find that this appeal is from an interlocutory order entered by an administrative law judge during the trial of a case. Accordingly, the Board is without jurisdiction to review the order at this stage of the proceedings.

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
Gary R. Terrill, Overland Park, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director